



March 13, 2009

ENGROSSED HOUSE BILL No. 1358

DIGEST OF HB 1358 (Updated March 11, 2009 3:23 pm - DI 87)

Citations Affected: IC 6-1.1; IC 32-29; IC 32-30; IC 35-43; IC 36-1; IC 36-7.

Synopsis: Eligibility for purchasing property at tax sales. Applies restrictions on purchasing real property at a tax sale to a person who owns a fee interest, a life estate interest, or the equitable interest of a contract purchaser in a vacant or abandoned structure subject to an enforcement order concerning a nuisance or an unsafe building. Requires a sheriff to cancel a sale if the person filing the praecipe for sale fails to pay delinquent property taxes, special assessments, penalties, and interest or any redemption where a tax sale certificate is outstanding. Specifies the date by which the county treasurer or county executive certifies to the county auditor a list of real property that have unpaid property taxes, special assessments, and costs. Prohibits a political subdivision from certifying unpaid special assessments, fees, penalties, or charges for collection to the treasurer or auditor: (1) after the treasurer certifies to the county auditor the properties with unpaid assessments and taxes; and (2) before the date on which tax sale certificates on the properties are offered for sale. Provides that a person not having a contractual interest in a vacant or abandoned property commits criminal trespass if: (1) a law enforcement officer, who has a

(Continued next page)

Effective: July 1, 2009.

Sullivan, Frizzell

(SENATE SPONSORS — MILLER, TAYLOR, BREAUX)

January 13, 2009, read first time and referred to Committee on Local Government.
February 10, 2009, reported — Do Pass.
February 16, 2009, read second time, ordered engrossed. Engrossed.
February 17, 2009, read third time, passed. Yeas 94, nays 1.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Local Government.
March 12, 2009, amended, reported favorably — Do Pass.

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reasonable suspicion that criminal activity has occurred or is occurring, prohibits the person from entering or asks the person to leave the property; and (2) the person knowingly or intentionally enters or refuses to leave the property. Provides that a person commits criminal trespass if the person knowingly or intentionally enters a vacant or abandoned property subject to an abatement order after being denied entry by a court order issued to the person or issued to the general public by posting on or around the premises. Requires a court to issue a continuous enforcement order as part of an order issued for violation of an ordinance regulating or prohibiting a condition or use of property or engaging in conduct without a license or permit. Defines a "continuous enforcement order" as an order issued for compliance or abatement which remains in full force and effect on a property without obtaining additional compliance and abatement authority or orders for the same or similar violations. Provides that if a second or subsequent civil judgment is entered against a property owner (relating to the same or a different property) a court may order the owner to pay treble damages based on the costs of the ordered action. Adds provisions regarding abatement of vacant and abandoned structures that a municipality or county may adopt by ordinance. Provides that an owner of a vacant structure or an abandoned structure may be liable for civil penalties if the owner fails to act to change the status of the property as vacant or abandoned.

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March 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1358

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-1.1-24-1, AS AMENDED BY P.L.169-2006,
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 1. (a) On or ~~before July~~ **after January** 1 of each
4 year ~~or but not later than~~ **fifty-one (51)** days after the **first** tax
5 payment due date **of the tax sale year**, the county treasurer (or county
6 executive, in the case of property described in subdivision (2)) shall
7 certify to the county auditor a list of real property on which any of the
8 following exist:
9 (1) In the case of real property other than real property described
10 in subdivision (2), any property taxes or special assessments
11 certified to the county auditor for collection by the county
12 treasurer from the prior year's spring installment or before are
13 delinquent as determined under IC 6-1.1-37-10.
14 (2) In the case of real property for which a county executive has
15 certified to the county auditor that the real property is:
16 (A) vacant; or
17 (B) abandoned;

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any property taxes or special assessments from the prior year's fall installment or before that are delinquent as determined under IC 6-1.1-37-10. The county executive must make a certification under this subdivision not later than sixty-one (61) days before the earliest date on which application for judgment and order for sale may be made.

(3) Any unpaid costs are due under section 2(b) of this chapter from a prior tax sale.

(b) The county auditor shall maintain a list of all real property eligible for sale. Unless the taxpayer pays to the county treasurer the amounts in subsection (a), the taxpayer's property shall remain on the list. The list must:

(1) describe the real property by parcel number and common address, if any;

(2) for a tract or item of real property with a single owner, indicate the name of the owner; and

(3) for a tract or item with multiple owners, indicate the name of at least one (1) of the owners.

(c) Except as otherwise provided in this chapter, the real property so listed is eligible for sale in the manner prescribed in this chapter.

(d) Not later than fifteen (15) days after the date of the county treasurer's certification under subsection (a), the county auditor shall mail by certified mail a copy of the list described in subsection (b) to each mortgagee who requests from the county auditor by certified mail a copy of the list. Failure of the county auditor to mail the list under this subsection does not invalidate an otherwise valid sale.

(e) After the date the treasurer certifies the list under subsection (a), and before the date on which tax sale certificates on the properties are offered for sale, political subdivisions in the county may not certify to the county auditor or county treasurer any special assessments, fees, penalties, or charges for collection. The only charges allowable for collection during this period are for real property tax payments under IC 6-1.1 that are due during this period and any penalties.

SECTION 2. IC 6-1.1-24-5.3, AS AMENDED BY P.L.169-2006, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5.3. (a) This section applies to the following:

(1) A person who:

(A) owns a fee interest, a life estate interest, or the equitable interest of a contract purchaser in an unsafe building or unsafe premises in the county in which a sale is held under this chapter; and

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(B) is subject to an order issued under IC 36-7-9-5(a)(2), IC 36-7-9-5(a)(3), IC 36-7-9-5(a)(4), or IC 36-7-9-5(a)(5) regarding which the conditions set forth in IC 36-7-9-10(a)(1) through IC 36-7-9-10(a)(4) exist.

(2) A person who:

(A) owns a fee interest, a life estate interest, or the equitable interest of a contract purchaser in an unsafe building or unsafe premises in the county in which a sale is held under this chapter; and

(B) is subject to an order issued under IC 36-7-9-5(a), other than an order issued under IC 36-7-9-5(a)(2), IC 36-7-9-5(a)(3), IC 36-7-9-5(a)(4), or IC 36-7-9-5(a)(5), regarding which the conditions set forth in IC 36-7-9-10(b)(1) through IC 36-7-9-10(b)(4) exist.

(3) A person who is the defendant in a court action brought under IC 36-7-9-18, IC 36-7-9-19, IC 36-7-9-20, IC 36-7-9-21, or IC 36-7-9-22 in the county in which a sale is held under this chapter that has resulted in a judgment in favor of the plaintiff and the unsafe condition that caused the action to be brought has not been corrected.

(4) A person who has any of the following relationships to a person, partnership, corporation, or legal entity described in subdivisions (1), (2), or (3);

(A) A partner of a partnership.

(B) An officer or majority stockholder of a corporation.

(C) The person who directs the activities or has a majority ownership in a legal entity other than a partnership or corporation.

(5) A person who, in the county in which a sale is held under this chapter, owes:

(A) delinquent taxes;

(B) special assessments;

(C) penalties;

(D) interest; or

(E) costs directly attributable to a prior tax sale;

on a tract or an item of real property listed under section 1 of this chapter.

(6) A person who owns a fee interest, a life estate interest, or the equitable interest of a contract purchaser in a vacant or abandoned structure subject to an enforcement order under IC 32-30-6, IC 32-30-7, IC 32-30-8, or IC 36-7-9.

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~~(6)~~ (7) A person who is an agent of the person described in this subsection.

(b) A person subject to this section may not purchase a tract offered for sale under section 5 or 6.1 of this chapter. However, this section does not prohibit a person from bidding on a tract that is owned by the person and offered for sale under section 5 of this chapter.

(c) The county treasurer shall require each person who will be bidding at the tax sale to sign a statement in a form substantially similar to the following:

"Indiana law prohibits a person who owes delinquent taxes, special assessments, penalties, interest, or costs directly attributable to a prior tax sale, from purchasing tracts or items of real property at a tax sale. I hereby affirm under the penalties for perjury that I do not owe delinquent taxes, special assessments, penalties, interest, costs directly attributable to a prior tax sale, amounts from a final adjudication in favor of a political subdivision in this county, any civil penalties imposed for the violation of a building code or ordinance of this county, or any civil penalties imposed by a health department in this county. Further, I hereby acknowledge that any successful bid I make in violation of this statement is subject to forfeiture. In the event of forfeiture, the amount of my bid shall be applied to the delinquent taxes, special assessments, penalties, interest, costs, judgments, or civil penalties I owe, and a certificate will be issued to the county executive."

(d) If a person purchases a tract that the person was not eligible to purchase under this section, the sale of the property is subject to forfeiture. If the county treasurer determines or is notified not more than six (6) months after the date of the sale that the sale of the property should be forfeited, the county treasurer shall:

- (1) notify the person in writing that the sale is subject to forfeiture if the person does not pay the amounts that the person owes within thirty (30) days of the notice;
- (2) if the person does not pay the amounts that the person owes within thirty (30) days after the notice, apply the surplus amount of the person's bid to the person's delinquent taxes, special assessments, penalties, and interest;
- (3) remit the amounts owed from a final adjudication or civil penalties in favor of a political subdivision to the appropriate political subdivision; and
- (4) notify the county auditor that the sale has been forfeited.

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1 Upon being notified that a sale has been forfeited, the county auditor
2 shall issue a certificate to the county executive under section 6 of this
3 chapter.

4 (e) A county treasurer may decline to forfeit a sale under this section
5 because of inadvertence or mistake, lack of actual knowledge by the
6 bidder, substantial harm to other parties with interests in the tract or
7 item of real property, or other substantial reasons. If the treasurer
8 declines to forfeit a sale, the treasurer shall:

9 (1) prepare a written statement explaining the reasons for
10 declining to forfeit the sale; and

11 (2) retain the written statement as an official record.

12 (f) If a sale is forfeited under this section and the tract or item of real
13 property is redeemed from the sale, the county auditor shall deposit the
14 amount of the redemption into the county general fund and notify the
15 county executive of the redemption. Upon being notified of the
16 redemption, the county executive shall surrender the certificate to the
17 county auditor.

18 SECTION 3. IC 32-29-7-8.1 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2009]: **Sec. 8.1. The sheriff shall require the party that files a
21 praecipe for a sheriff's sale under section 3(b) of this chapter to
22 pay all delinquent property taxes, special assessments, penalties,
23 and interest that are due and owing on the date of the sale, or pay
24 any amount of redemption if a tax sale certificate is outstanding. If
25 the taxes or redemption amount is not paid in full by the date of the
26 sale, the sheriff shall cancel the sale. The sheriff may not conduct
27 a subsequent sale unless another praecipe for a sheriff's sale is filed
28 under section 3(b) of this chapter and all other requirements under
29 this chapter for a sheriff's sale are fulfilled.**

30 SECTION 4. IC 32-30-10-14 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. The proceeds of a
32 sale described in IC 32-29-7 or section 8 or 12(b) of this chapter must
33 be applied in the following order:

34 (1) Expenses of the offer and sale, including expenses incurred
35 under IC 32-29-7-4 or section 9 of this chapter (or IC 34-1-53-6.5
36 or IC 32-15-6-6.5 before their repeal).

37 (2) The amount of any property taxes on the property sold:

38 (A) that are due and owing; and

39 (B) for which the due date has passed as of the date of the
40 sheriff's sale.

41 The sheriff shall transfer the amounts collected under this
42 subdivision to the county treasurer not more than ten (10) days

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after the date of the sheriff's sale.

~~(3)~~ Any amount of redemption where a certificate of sale is outstanding.

~~(4)~~ (2) The payment of the principal due, interest, and costs not described in subdivision (1).

~~(5)~~ (3) The residue secured by the mortgage and not due.

~~(6)~~ (4) If the residue referred to in subdivision ~~(5)~~ (3) does not bear interest, a deduction must be made by discounting the legal interest.

In all cases in which the proceeds of sale exceed the amounts described in subdivisions (1) through ~~(6)~~; (4), the surplus must be paid to the clerk of the court to be transferred, as the court directs, to the mortgage debtor, mortgage debtor's heirs, or other persons assigned by the mortgage debtor.

SECTION 5. IC 35-43-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

(1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;

(5) not having a contractual interest in the property, knowingly or intentionally enters the dwelling of another person without the person's consent; or

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier's consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;

(7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from

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entering or asked to leave the property by a law enforcement officer when the property is:

(A) vacant or designated by a municipality or county enforcement authority to be abandoned property; and

(B) subject to abatement under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; or

(8) knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property:

(A) has been designated by a municipality or county enforcement authority to be a vacant property or an abandoned property; and

(B) is subject to an abatement order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36;

commits criminal trespass, a Class A misdemeanor. However, the offense is a Class D felony if it is committed on a scientific research facility, on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property.

(b) A person has been denied entry under subdivision (a)(1) of this section when the person has been denied entry by means of:

(1) personal communication, oral or written; or

(2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public; or

(3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36.

(c) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (a)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(d) A person described in subsection (a)(7) violates subsection (a)(7) unless the person has the written permission of the owner, owner's agent, enforcement authority, or court to come onto the property for purposes of performing maintenance, repair, or demolition.

(e) A person described in subsection (a)(8) violates subsection (a)(8) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

~~(c)~~ (f) Subsections (a), and (b), and (e) do not apply to the

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following:

- (1) A passenger on a train.
- (2) An employee of a railroad carrier while engaged in the performance of official duties.
- (3) A law enforcement officer, firefighter, or emergency response personnel while engaged in the performance of official duties.
- (4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or limb.
- (5) A person on the station grounds or in the depot of a railroad carrier:
 - (A) as a passenger; or
 - (B) for the purpose of transacting lawful business.
- (6) A:
 - (A) person; or
 - (B) person's:
 - (i) family member;
 - (ii) invitee;
 - (iii) employee;
 - (iv) agent; or
 - (v) independent contractor;
- going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.
- (7) A person having written permission from the railroad carrier to go on specified railroad property.
- (8) A representative of the Indiana department of transportation while engaged in the performance of official duties.
- (9) A representative of the federal Railroad Administration while engaged in the performance of official duties.
- (10) A representative of the National Transportation Safety Board while engaged in the performance of official duties.

SECTION 6. IC 36-1-6-4, AS AMENDED BY P.L.194-2007, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A municipal corporation may bring a civil action as provided in IC 34-28-5-1 if a person:

- (1) violates an ordinance regulating or prohibiting a condition or use of property; or
 - (2) engages in conduct without a license or permit if an ordinance requires a license or permit to engage in the conduct.
- (b) A court may take any appropriate action in a proceeding under

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this section, including any of the following actions:

- (1) Issuing an injunction.
- (2) Entering a judgment.
- (3) Ordering an inspection.
- (4) Ordering a property vacated.
- (5) Imposing a penalty not to exceed an amount set forth in IC 36-1-3-8(a)(10).
- (6) Imposing court costs and fees in accordance with IC 33-37-4-2 and IC 33-37-5.
- (7) Ordering a defendant to take appropriate action to bring a property into compliance with an ordinance within a specified time.
- (8) Ordering a municipal corporation to take appropriate action to bring a property into compliance with an ordinance in accordance with IC 36-1-6-2.
- (9) Ordering a property demolished.**

(c) As a part of an order issued under this section, a court shall grant the municipal corporation a continuous enforcement order that authorizes specific ongoing compliance and enforcement activities if a property requires reinspection or additional periodic abatement. As used in this section, "continuous enforcement order" means an order issued for compliance or abatement that remains in full force and effect on a property without further requirement to seek additional compliance and abatement authority or orders for the same or similar violations. The municipal corporation may assess and collect ongoing costs for continuous enforcement order activities from any party subject to the court's order. Continuous enforcement orders can be enforced, including assessment of fees and costs, without the need for additional notice or hearing.

SECTION 7. IC 36-7-9-5, AS AMENDED BY P.L.88-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The enforcement authority may issue an order requiring action relative to any unsafe premises, including:

- (1) vacating of an unsafe building;
- (2) sealing an unsafe building against intrusion by unauthorized persons, in accordance with a uniform standard established by ordinance;
- (3) extermination of vermin in and about the unsafe premises;
- (4) removal of trash, debris, fire hazardous material, or a public health hazard in and about the unsafe premises;
- (5) repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance

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required for human habitation, occupancy, or use by a statute, a rule adopted under IC 4-22-2, or an ordinance;

(6) **demolition and** removal of part of an unsafe building;

(7) **demolition and** removal of an unsafe building ~~and if~~:

(A) **the general condition of the building warrants removal; or**

(B) **the building continues to require reinspection and additional abatement action after an initial abatement action was taken pursuant to notice and an order; and**

(8) requiring, for an unsafe building that will be sealed for a period of more than ninety (90) days:

(A) sealing against intrusion by unauthorized persons and the effects of weather;

(B) exterior improvements to make the building compatible in appearance with other buildings in the area; and

(C) continuing maintenance and upkeep of the building and premises;

in accordance with standards established by ordinance.

Notice of the order must be given under section 25 of this chapter. The ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties. The order supersedes any permit relating to building or land use, whether that permit is obtained before or after the order is issued.

(b) The order must contain:

(1) the name of the person to whom the order is issued;

(2) the legal description or address of the unsafe premises that are the subject of the order;

(3) the action that the order requires;

(4) the period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given;

(5) if a hearing is required, a statement indicating the exact time and place of the hearing, and stating that person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments;

(6) if a hearing is not required, a statement that an order under subsection (a)(2), (a)(3), (a)(4), or (a)(5) becomes final ten (10) days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises, and the request is delivered to the enforcement authority before the end

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of the ten (10) day period;

(7) a statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with;

(8) a statement indicating the obligation created by section 27 of this chapter relating to notification of subsequent interest holders and the enforcement authority; and

(9) the name, address, and telephone number of the enforcement authority.

(c) The order must allow a sufficient time, of at least ten (10) days, but not more than sixty (60) days, from the time when notice of the order is given, to accomplish the required action. If the order allows more than thirty (30) days to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within thirty (30) days.

(d) The order expires two (2) years from the day the notice of the order is given, unless one (1) or more of the following events occurs within that two (2) year period:

(1) A complaint requesting judicial review is filed under section 9 of this chapter.

(2) A contract for action required by the order is let at public bid under section 11 of this chapter.

(3) A civil action is filed under section 17 of this chapter.

SECTION 8. IC 36-7-9-7, AS AMENDED BY P.L.169-2006, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A hearing must be held relative to each order of the enforcement authority, except for an order issued under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter. An order issued under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter becomes final ten (10) days after notice is given, unless a hearing is requested before the ten (10) day period ends by a person holding a fee interest, life estate interest, mortgage interest, or equitable interest of a contract purchaser in the unsafe premises. The hearing shall be conducted by the hearing authority.

(b) The hearing shall be held on a business day no earlier than ten (10) days after notice of the order is given. The hearing authority may, however, take action at the hearing, or before the hearing if a written request is received by the enforcement authority not later than five (5) days after notice is given, to continue the hearing to a business day not later than fourteen (14) days after the hearing date shown on the order. Unless the hearing authority takes action to have the continued hearing held on a definite, specified date, notice of the continued hearing must be given to the person to whom the order was issued at least five (5)

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1 days before the continued hearing date, in the manner prescribed by
 2 section 25 of this chapter. If the order being considered at the
 3 continued hearing was served by publication, it is sufficient to give
 4 notice of the continued hearing by publication unless the enforcement
 5 authority has received information in writing that enables it to make
 6 service under section 25 of this chapter by a method other than
 7 publication.

8 (c) The person to whom the order was issued, any person having a
 9 substantial property interest in the unsafe premises that are the subject
 10 of the order, or any other person with an interest in the proceedings
 11 may appear in person or by counsel at the hearing. Each person
 12 appearing at the hearing is entitled to present evidence, cross-examine
 13 opposing witnesses, and present arguments.

14 (d) At the conclusion of any hearing at which a continuance is not
 15 granted, the hearing authority may make findings and take action to:

- 16 (1) affirm the order;
- 17 (2) rescind the order; or
- 18 (3) modify the order, but unless the person to whom the order was
 19 issued, or counsel for that person, is present at the hearing, the
 20 hearing authority may modify the order in only a manner that
 21 makes its terms less stringent.

22 (e) In addition to affirming the order, in those cases in which the
 23 hearing authority finds that there has been a willful failure to comply
 24 with the order, the hearing authority may impose a civil penalty in an
 25 amount not to exceed five thousand dollars (\$5,000). The effective date
 26 of the civil penalty may be postponed for a reasonable period, after
 27 which the hearing authority may order the civil penalty reduced or
 28 stricken if the hearing authority is satisfied that all work necessary to
 29 fully comply with the order has been done. For purposes of an appeal
 30 under section 8 of this chapter or enforcement of an order under section
 31 17 of this chapter, action of the hearing authority is considered final
 32 upon the affirmation of the order, even though the hearing authority
 33 may retain jurisdiction for the ultimate determination related to the
 34 civil penalty. In the hearing authority's exercise of continuing
 35 jurisdiction, the hearing authority may, in addition to reducing or
 36 striking the civil penalty, impose one (1) or more additional civil
 37 penalties in an amount not to exceed five thousand dollars (\$5,000) per
 38 civil penalty. An additional civil penalty may be imposed if the hearing
 39 authority finds that:

- 40 (1) significant work on the premises to comply with the affirmed
 41 order has not been accomplished; and
- 42 (2) the premises have a negative effect on property values or the

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1 quality of life of the surrounding area or the premises require the
 2 provision of services by local government in excess of the
 3 services required by ordinary properties.

4 (f) If, at a hearing, a person to whom an order has been issued
 5 requests an additional period to accomplish action required by the
 6 order, and shows good cause for this request to be granted, the hearing
 7 authority may grant the request. However, as a condition for allowing
 8 the additional period, the hearing authority may require that the person
 9 post a performance bond to be forfeited if the action required by the
 10 order is not completed within the additional period.

11 **(g) If an order is affirmed or modified, the hearing authority**
 12 **shall issue a continuous enforcement order as provided for in**
 13 **IC 36-1-6-4(c).**

14 ~~(g)~~ **(h)** The board or commission having control over the department
 15 shall, at a public hearing, after having given notice of the time and
 16 place of the hearing by publication in accordance with IC 5-3-1, adopt
 17 a schedule setting forth the maximum amount of performance bonds
 18 applicable to various types of ordered action. The hearing authority
 19 shall use this schedule to fix the amount of the performance bond
 20 required under subsection (f).

21 ~~(h)~~ **(i)** The record of the findings made and action taken by the
 22 hearing authority at the hearing shall be available to the public upon
 23 request. However, neither the enforcement authority nor the hearing
 24 authority is required to give any person notice of the findings and
 25 action.

26 ~~(i)~~ **(j)** If a civil penalty under subsection (e) is unpaid for more than
 27 fifteen (15) days after payment of the civil penalty is due, the civil
 28 penalty may be collected from any person against whom the hearing
 29 officer assessed the civil penalty or fine. A civil penalty or fine may be
 30 collected under this subsection in the same manner as costs under
 31 section 13 or 13.5 of this chapter. The amount of the civil penalty or
 32 fine that is collected shall be deposited in the unsafe building fund.

33 **SECTION 9. IC 36-7-9-17 IS AMENDED TO READ AS**
 34 **FOLLOWS [EFFECTIVE JULY 1, 2009]:** Sec. 17. (a) The department,
 35 acting through its enforcement authority, a person designated by the
 36 enforcement authority, or a community organization may bring a civil
 37 action regarding unsafe premises in the circuit, superior, or municipal
 38 court of the county. The department is not liable for the costs of such
 39 an action. The court may grant one (1) or more of the kinds of relief
 40 authorized by sections 18 through 22 of this chapter.

41 (b) A civil action may not be initiated under this section before the
 42 final date of an order or an extension of an order under section 5(c) of

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1 this chapter requiring:

2 (1) the completion; or

3 (2) a substantial beginning toward accomplishing the completion;
4 of the required remedial action.

5 (c) A community organization may not initiate a civil action under
6 this section if:

7 (1) the enforcement authority or a person designated by the
8 enforcement authority has filed a civil action under this section
9 regarding the unsafe premises; or

10 (2) the enforcement authority has issued a final order that the
11 required remedial action has been satisfactorily completed.

12 (d) A community organization may not initiate a civil action under
13 this section if the real property that is the subject of the civil action is
14 located outside the specific geographic boundaries of the area defined
15 in the bylaws or articles of incorporation of the community
16 organization.

17 (e) At least sixty (60) days before commencing a civil action under
18 this section, a community organization must issue a notice by certified
19 mail, return receipt requested, that:

20 (1) specifies:

21 (A) the nature of the alleged nuisance;

22 (B) the date the nuisance was first discovered;

23 (C) the location on the property where the nuisance is
24 allegedly occurring;

25 (D) the intent of the community organization to bring a civil
26 action under this section; and

27 (E) the relief sought in the action; and

28 (2) is provided to:

29 (A) the owner of record of the premises;

30 (B) tenants located on the premises;

31 (C) the enforcement authority; and

32 (D) any person that possesses an interest of record.

33 (f) In any action filed by a community organization under this
34 section, a court may award reasonable attorney's fees, court costs, and
35 other reasonable expenses of litigation to the prevailing party.

36 **(g) If a second or subsequent civil judgment is entered under**
37 **this section:**

38 **(1) against an owner of a known or recorded fee interest, life**
39 **estate, or equitable interest as a contract purchaser of**
40 **property; and**

41 **(2) during any two (2) year period;**

42 **a court may order the owner to pay treble damages based on the**

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costs of the ordered action. The second or subsequent civil judgment may relate to the same property or a different property held by the owner.

SECTION 10. IC 36-7-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 36. Abatement of Vacant Structures and Abandoned Structures

Sec. 1. As used in this chapter, "abandoned structure" means any of the following:

(1) Commercial real property or a vacant structure on commercial real property that is used or was previously used for industrial or commercial purposes:

(A) that the owner of the property or structure has declared in writing to be abandoned; or

(B) for which the owner of the property or structure has been given a written order by an enforcement authority to rehabilitate or demolish and the owner:

(i) has not applied for a permit to rehabilitate or demolish the property or structure; or

(ii) applied for and was granted a permit, but rehabilitation or demolition work has not commenced on the property or structure within thirty (30) days after the date the permit was granted.

(2) Real property that has not been used for a legal purpose for at least six (6) consecutive months and:

(A) in the judgment of an enforcement authority, is in need of completion, rehabilitation, or repair, and completion, rehabilitation, or repair work has not taken place on the property for at least six (6) consecutive months;

(B) on which at least one (1) installment of property taxes is delinquent; or

(C) that has been declared a public nuisance by a hearing authority.

(3) Vacant real property on which criminal activity under IC 35 has occurred on more than three (3) occasions during any six (6) consecutive month period.

(4) Property that has been declared in writing to be abandoned by the owner, including an estate or a trust that possesses the property.

(5) Vacant property on which a municipal lien has remained unpaid for at least one (1) year.

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1 **Sec. 2.** As used in this chapter, "enforcement authority" has the
2 meaning set forth in IC 36-7-9-2.

3 **Sec. 3.** As used in this chapter, "hearing authority" has the
4 meaning set forth in IC 36-7-9-2.

5 **Sec. 4.** As used in this chapter, "owner" means a person that
6 holds a substantial interest in property in the form of a known or
7 recorded fee interest, life estate, or equitable interest as a contract
8 purchaser.

9 **Sec. 5.** As used in this chapter, "vacant structure" means a
10 structure or building that is not being occupied by an owner,
11 tenant, or others authorized by the owner.

12 **Sec. 6.** The legislative body of a municipality or county:

13 (1) may adopt this chapter by ordinance; and

14 (2) if the legislative body adopts this chapter by ordinance,
15 shall adopt rules and procedures for its enforcement.

16 **Sec. 7.** (a) An enforcement authority may administer and
17 enforce this chapter in conjunction with a civil action under
18 IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-1-6, or IC 36-7-9.

19 (b) Under all enforcement and civil actions undertaken under
20 subsection (a), the enforcement authority is entitled to recover
21 court costs and attorney's fees.

22 **Sec. 8.** If an enforcement authority determines that a vacant
23 structure or an abandoned structure exists, an abatement notice
24 and order may be sent to the owner that directs the owner to:

25 (1) abate the vacant structure or abandoned structure by
26 cleaning and securing or boarding up the vacant structure or
27 abandoned structure and the premises upon which it is
28 located; and

29 (2) erect fences, barriers, berms, or other suitable means to
30 discourage:

31 (A) access to the vacant structure or abandoned structure;
32 and

33 (B) illegal dumping or littering on the premises upon which
34 the vacant structure or abandoned structure exists.

35 **Sec. 9.** (a) An owner of a property that remains a vacant
36 structure or an abandoned structure for at least ninety (90)
37 consecutive calendar days may be liable for a civil penalty in the
38 amount of five hundred dollars (\$500) per vacant structure or
39 abandoned structure, not to exceed five thousand dollars (\$5,000)
40 per structure per year, unless:

41 (1) documentation has been filed and approved by the
42 enforcement authority that indicates the owner's intent to

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eliminate the vacant structure or abandoned structure status of the property;

(2) the owner is current on all property taxes and special assessments; and

(3) at least one (1) of the following applies:

(A) The structure is the subject of a valid building permit for repair or rehabilitation and the owner is proceeding diligently and in good faith to complete the repair or rehabilitation of the structure as defined in the enforcement order.

(B) The structure is:

(i) maintained in compliance with this chapter; and

(ii) actively being offered for sale, lease, or rent.

(C) The owner can demonstrate that the owner made a diligent and good faith effort to implement actions approved by the enforcement authority.

(b) If the structure continues to remain a vacant structure beyond the initial ninety (90) days described in subsection (a) and the owner does not meet any of the exceptions set forth in this section, the enforcement authority may continue to assess penalties each year on each structure in the following amounts:

(1) One thousand dollars (\$1,000) for the second ninety (90) calendar day period each structure remains a vacant structure or an abandoned structure.

(2) One thousand five hundred dollars (\$1,500) for the third ninety (90) calendar day period each structure remains a vacant structure or an abandoned structure.

(3) Two thousand dollars (\$2,000) for the fourth and each subsequent ninety (90) calendar day period thereafter each structure remains a vacant structure or an abandoned structure.

A civil penalty under this subsection may not exceed five thousand dollars (\$5,000) per structure per year.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1358, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

SMITH V, Chair

Committee Vote: yeas 8, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1358, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-1.1-24-1, AS AMENDED BY P.L.169-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) On or ~~before July~~ **after January** 1 of each year ~~or but not later than~~ fifty-one (51) days after the **first** tax payment due date **of the tax sale year**, the county treasurer (or county executive, in the case of property described in subdivision (2)) shall certify to the county auditor a list of real property on which any of the following exist:

(1) In the case of real property other than real property described in subdivision (2), any property taxes or special assessments certified to the county auditor for collection by the county treasurer from the prior year's spring installment or before are delinquent as determined under IC 6-1.1-37-10.

(2) In the case of real property for which a county executive has certified to the county auditor that the real property is:

(A) vacant; or

(B) abandoned;

any property taxes or special assessments from the prior year's fall installment or before that are delinquent as determined under IC 6-1.1-37-10. The county executive must make a certification under this subdivision not later than sixty-one (61) days before the earliest date on which application for judgment and order for sale may be made.

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(3) Any unpaid costs are due under section 2(b) of this chapter from a prior tax sale.

(b) The county auditor shall maintain a list of all real property eligible for sale. Unless the taxpayer pays to the county treasurer the amounts in subsection (a), the taxpayer's property shall remain on the list. The list must:

- (1) describe the real property by parcel number and common address, if any;
- (2) for a tract or item of real property with a single owner, indicate the name of the owner; and
- (3) for a tract or item with multiple owners, indicate the name of at least one (1) of the owners.

(c) Except as otherwise provided in this chapter, the real property so listed is eligible for sale in the manner prescribed in this chapter.

(d) Not later than fifteen (15) days after the date of the county treasurer's certification under subsection (a), the county auditor shall mail by certified mail a copy of the list described in subsection (b) to each mortgagee who requests from the county auditor by certified mail a copy of the list. Failure of the county auditor to mail the list under this subsection does not invalidate an otherwise valid sale.

(e) After the date the treasurer certifies the list under subsection (a), and before the date on which tax sale certificates on the properties are offered for sale, political subdivisions in the county may not certify to the county auditor or county treasurer any special assessments, fees, penalties, or charges for collection. The only charges allowable for collection during this period are for real property tax payments under IC 6-1.1 that are due during this period and any penalties."

Page 4, after line 6, begin a new paragraph and insert:

"SECTION 3. IC 32-29-7-8.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.1. The sheriff shall require the party that files a praecipe for a sheriff's sale under section 3(b) of this chapter to pay all delinquent property taxes, special assessments, penalties, and interest that are due and owing on the date of the sale, or pay any amount of redemption if a tax sale certificate is outstanding. If the taxes or redemption amount is not paid in full by the date of the sale, the sheriff shall cancel the sale. The sheriff may not conduct a subsequent sale unless another praecipe for a sheriff's sale is filed under section 3(b) of this chapter and all other requirements under this chapter for a sheriff's sale are fulfilled.

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SECTION 4. IC 32-30-10-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. The proceeds of a sale described in IC 32-29-7 or section 8 or 12(b) of this chapter must be applied in the following order:

(1) Expenses of the offer and sale, including expenses incurred under IC 32-29-7-4 or section 9 of this chapter (or IC 34-1-53-6.5 or IC 32-15-6-6.5 before their repeal).

~~(2) The amount of any property taxes on the property sold:~~

~~(A) that are due and owing; and~~

~~(B) for which the due date has passed as of the date of the sheriff's sale.~~

~~The sheriff shall transfer the amounts collected under this subdivision to the county treasurer not more than ten (10) days after the date of the sheriff's sale.~~

~~(3) Any amount of redemption where a certificate of sale is outstanding.~~

~~(4) (2) The payment of the principal due, interest, and costs not described in subdivision (1).~~

~~(5) (3) The residue secured by the mortgage and not due.~~

~~(6) (4) If the residue referred to in subdivision (5) (3) does not bear interest, a deduction must be made by discounting the legal interest.~~

In all cases in which the proceeds of sale exceed the amounts described in subdivisions (1) through ~~(6)~~; **(4)**, the surplus must be paid to the clerk of the court to be transferred, as the court directs, to the mortgage debtor, mortgage debtor's heirs, or other persons assigned by the mortgage debtor.

SECTION 5. IC 35-43-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

(1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;

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(5) not having a contractual interest in the property, knowingly or intentionally enters the dwelling of another person without the person's consent; ~~or~~

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier's consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;

(7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is:

(A) vacant or designated by a municipality or county enforcement authority to be abandoned property; and

(B) subject to abatement under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; or

(8) knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property:

(A) has been designated by a municipality or county enforcement authority to be a vacant property or an abandoned property; and

(B) is subject to an abatement order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36;

commits criminal trespass, a Class A misdemeanor. However, the offense is a Class D felony if it is committed on a scientific research facility, on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property.

(b) A person has been denied entry under subdivision (a)(1) of this section when the person has been denied entry by means of:

(1) personal communication, oral or written; ~~or~~

(2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public; ~~or~~

(3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36.

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(c) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (a)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(d) A person described in subsection (a)(7) violates subsection (a)(7) unless the person has the written permission of the owner, owner's agent, enforcement authority, or court to come onto the property for purposes of performing maintenance, repair, or demolition.

(e) A person described in subsection (a)(8) violates subsection (a)(8) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(f) Subsections (a), and (b), and (e) do not apply to the following:

- (1) A passenger on a train.
- (2) An employee of a railroad carrier while engaged in the performance of official duties.
- (3) A law enforcement officer, firefighter, or emergency response personnel while engaged in the performance of official duties.
- (4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or limb.
- (5) A person on the station grounds or in the depot of a railroad carrier:
 - (A) as a passenger; or
 - (B) for the purpose of transacting lawful business.
- (6) A:
 - (A) person; or
 - (B) person's:
 - (i) family member;
 - (ii) invitee;
 - (iii) employee;
 - (iv) agent; or
 - (v) independent contractor;
 going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.
- (7) A person having written permission from the railroad carrier to go on specified railroad property.
- (8) A representative of the Indiana department of transportation while engaged in the performance of official duties.

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(9) A representative of the federal Railroad Administration while engaged in the performance of official duties.

(10) A representative of the National Transportation Safety Board while engaged in the performance of official duties.

SECTION 6. IC 36-1-6-4, AS AMENDED BY P.L.194-2007, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A municipal corporation may bring a civil action as provided in IC 34-28-5-1 if a person:

(1) violates an ordinance regulating or prohibiting a condition or use of property; or

(2) engages in conduct without a license or permit if an ordinance requires a license or permit to engage in the conduct.

(b) A court may take any appropriate action in a proceeding under this section, including any of the following actions:

(1) Issuing an injunction.

(2) Entering a judgment.

(3) Ordering an inspection.

(4) Ordering a property vacated.

(5) Imposing a penalty not to exceed an amount set forth in IC 36-1-3-8(a)(10).

(6) Imposing court costs and fees in accordance with IC 33-37-4-2 and IC 33-37-5.

(7) Ordering a defendant to take appropriate action to bring a property into compliance with an ordinance within a specified time.

(8) Ordering a municipal corporation to take appropriate action to bring a property into compliance with an ordinance in accordance with IC 36-1-6-2.

(9) Ordering a property demolished.

(c) As a part of an order issued under this section, a court shall grant the municipal corporation a continuous enforcement order that authorizes specific ongoing compliance and enforcement activities if a property requires reinspection or additional periodic abatement. As used in this section, "continuous enforcement order" means an order issued for compliance or abatement that remains in full force and effect on a property without further requirement to seek additional compliance and abatement authority or orders for the same or similar violations. The municipal corporation may assess and collect ongoing costs for continuous enforcement order activities from any party subject to the court's order. Continuous enforcement orders can be enforced, including assessment of fees and costs, without the need for additional notice or hearing.

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SECTION 7. IC 36-7-9-5, AS AMENDED BY P.L.88-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The enforcement authority may issue an order requiring action relative to any unsafe premises, including:

- (1) vacating of an unsafe building;
- (2) sealing an unsafe building against intrusion by unauthorized persons, in accordance with a uniform standard established by ordinance;
- (3) extermination of vermin in and about the unsafe premises;
- (4) removal of trash, debris, fire hazardous material, or a public health hazard in and about the unsafe premises;
- (5) repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute, a rule adopted under IC 4-22-2, or an ordinance;
- (6) **demolition and** removal of part of an unsafe building;
- (7) **demolition and** removal of an unsafe building ~~and if~~:
 - (A) **the general condition of the building warrants removal; or**
 - (B) **the building continues to require reinspection and additional abatement action after an initial abatement action was taken pursuant to notice and an order; and**
- (8) requiring, for an unsafe building that will be sealed for a period of more than ninety (90) days:
 - (A) sealing against intrusion by unauthorized persons and the effects of weather;
 - (B) exterior improvements to make the building compatible in appearance with other buildings in the area; and
 - (C) continuing maintenance and upkeep of the building and premises;

in accordance with standards established by ordinance.

Notice of the order must be given under section 25 of this chapter. The ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties. The order supersedes any permit relating to building or land use, whether that permit is obtained before or after the order is issued.

(b) The order must contain:

- (1) the name of the person to whom the order is issued;
- (2) the legal description or address of the unsafe premises that are the subject of the order;
- (3) the action that the order requires;
- (4) the period of time in which the action is required to be

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accomplished, measured from the time when the notice of the order is given;

(5) if a hearing is required, a statement indicating the exact time and place of the hearing, and stating that person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments;

(6) if a hearing is not required, a statement that an order under subsection (a)(2), (a)(3), (a)(4), or (a)(5) becomes final ten (10) days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises, and the request is delivered to the enforcement authority before the end of the ten (10) day period;

(7) a statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with;

(8) a statement indicating the obligation created by section 27 of this chapter relating to notification of subsequent interest holders and the enforcement authority; and

(9) the name, address, and telephone number of the enforcement authority.

(c) The order must allow a sufficient time, of at least ten (10) days, but not more than sixty (60) days, from the time when notice of the order is given, to accomplish the required action. If the order allows more than thirty (30) days to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within thirty (30) days.

(d) The order expires two (2) years from the day the notice of the order is given, unless one (1) or more of the following events occurs within that two (2) year period:

(1) A complaint requesting judicial review is filed under section 9 of this chapter.

(2) A contract for action required by the order is let at public bid under section 11 of this chapter.

(3) A civil action is filed under section 17 of this chapter.

SECTION 8. IC 36-7-9-7, AS AMENDED BY P.L.169-2006, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A hearing must be held relative to each order of the enforcement authority, except for an order issued under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter. An order issued under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter becomes final ten (10) days after notice is given, unless a hearing is

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requested before the ten (10) day period ends by a person holding a fee interest, life estate interest, mortgage interest, or equitable interest of a contract purchaser in the unsafe premises. The hearing shall be conducted by the hearing authority.

(b) The hearing shall be held on a business day no earlier than ten (10) days after notice of the order is given. The hearing authority may, however, take action at the hearing, or before the hearing if a written request is received by the enforcement authority not later than five (5) days after notice is given, to continue the hearing to a business day not later than fourteen (14) days after the hearing date shown on the order. Unless the hearing authority takes action to have the continued hearing held on a definite, specified date, notice of the continued hearing must be given to the person to whom the order was issued at least five (5) days before the continued hearing date, in the manner prescribed by section 25 of this chapter. If the order being considered at the continued hearing was served by publication, it is sufficient to give notice of the continued hearing by publication unless the enforcement authority has received information in writing that enables it to make service under section 25 of this chapter by a method other than publication.

(c) The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments.

(d) At the conclusion of any hearing at which a continuance is not granted, the hearing authority may make findings and take action to:

- (1) affirm the order;
- (2) rescind the order; or
- (3) modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.

(e) In addition to affirming the order, in those cases in which the hearing authority finds that there has been a willful failure to comply with the order, the hearing authority may impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000). The effective date of the civil penalty may be postponed for a reasonable period, after which the hearing authority may order the civil penalty reduced or stricken if the hearing authority is satisfied that all work necessary to fully comply with the order has been done. For purposes of an appeal

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under section 8 of this chapter or enforcement of an order under section 17 of this chapter, action of the hearing authority is considered final upon the affirmation of the order, even though the hearing authority may retain jurisdiction for the ultimate determination related to the civil penalty. In the hearing authority's exercise of continuing jurisdiction, the hearing authority may, in addition to reducing or striking the civil penalty, impose one (1) or more additional civil penalties in an amount not to exceed five thousand dollars (\$5,000) per civil penalty. An additional civil penalty may be imposed if the hearing authority finds that:

- (1) significant work on the premises to comply with the affirmed order has not been accomplished; and
- (2) the premises have a negative effect on property values or the quality of life of the surrounding area or the premises require the provision of services by local government in excess of the services required by ordinary properties.

(f) If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order, and shows good cause for this request to be granted, the hearing authority may grant the request. However, as a condition for allowing the additional period, the hearing authority may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.

(g) If an order is affirmed or modified, the hearing authority shall issue a continuous enforcement order as provided for in IC 36-1-6-4(c).

~~(g)~~ **(h)** The board or commission having control over the department shall, at a public hearing, after having given notice of the time and place of the hearing by publication in accordance with IC 5-3-1, adopt a schedule setting forth the maximum amount of performance bonds applicable to various types of ordered action. The hearing authority shall use this schedule to fix the amount of the performance bond required under subsection (f).

~~(h)~~ **(i)** The record of the findings made and action taken by the hearing authority at the hearing shall be available to the public upon request. However, neither the enforcement authority nor the hearing authority is required to give any person notice of the findings and action.

~~(i)~~ **(j)** If a civil penalty under subsection (e) is unpaid for more than fifteen (15) days after payment of the civil penalty is due, the civil penalty may be collected from any person against whom the hearing officer assessed the civil penalty or fine. A civil penalty or fine may be

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collected under this subsection in the same manner as costs under section 13 or 13.5 of this chapter. The amount of the civil penalty or fine that is collected shall be deposited in the unsafe building fund.

SECTION 9. IC 36-7-9-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) The department, acting through its enforcement authority, a person designated by the enforcement authority, or a community organization may bring a civil action regarding unsafe premises in the circuit, superior, or municipal court of the county. The department is not liable for the costs of such an action. The court may grant one (1) or more of the kinds of relief authorized by sections 18 through 22 of this chapter.

(b) A civil action may not be initiated under this section before the final date of an order or an extension of an order under section 5(c) of this chapter requiring:

- (1) the completion; or
- (2) a substantial beginning toward accomplishing the completion; of the required remedial action.

(c) A community organization may not initiate a civil action under this section if:

- (1) the enforcement authority or a person designated by the enforcement authority has filed a civil action under this section regarding the unsafe premises; or
- (2) the enforcement authority has issued a final order that the required remedial action has been satisfactorily completed.

(d) A community organization may not initiate a civil action under this section if the real property that is the subject of the civil action is located outside the specific geographic boundaries of the area defined in the bylaws or articles of incorporation of the community organization.

(e) At least sixty (60) days before commencing a civil action under this section, a community organization must issue a notice by certified mail, return receipt requested, that:

- (1) specifies:
 - (A) the nature of the alleged nuisance;
 - (B) the date the nuisance was first discovered;
 - (C) the location on the property where the nuisance is allegedly occurring;
 - (D) the intent of the community organization to bring a civil action under this section; and
 - (E) the relief sought in the action; and
- (2) is provided to:
 - (A) the owner of record of the premises;

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- (B) tenants located on the premises;
- (C) the enforcement authority; and
- (D) any person that possesses an interest of record.

(f) In any action filed by a community organization under this section, a court may award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party.

(g) If a second or subsequent civil judgment is entered under this section:

- (1) against an owner of a known or recorded fee interest, life estate, or equitable interest as a contract purchaser of property; and**
- (2) during any two (2) year period;**

a court may order the owner to pay treble damages based on the costs of the ordered action. The second or subsequent civil judgment may relate to the same property or a different property held by the owner.

SECTION 10. IC 36-7-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 36. Abatement of Vacant Structures and Abandoned Structures

Sec. 1. As used in this chapter, "abandoned structure" means any of the following:

- (1) Commercial real property or a vacant structure on commercial real property that is used or was previously used for industrial or commercial purposes:**
 - (A) that the owner of the property or structure has declared in writing to be abandoned; or**
 - (B) for which the owner of the property or structure has been given a written order by an enforcement authority to rehabilitate or demolish and the owner:**
 - (i) has not applied for a permit to rehabilitate or demolish the property or structure; or**
 - (ii) applied for and was granted a permit, but rehabilitation or demolition work has not commenced on the property or structure within thirty (30) days after the date the permit was granted.**
- (2) Real property that has not been used for a legal purpose for at least six (6) consecutive months and:**
 - (A) in the judgment of an enforcement authority, is in need of completion, rehabilitation, or repair, and completion, rehabilitation, or repair work has not taken place on the**

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property for at least six (6) consecutive months;
 (B) on which at least one (1) installment of property taxes is delinquent; or
 (C) that has been declared a public nuisance by a hearing authority.

(3) Vacant real property on which criminal activity under IC 35 has occurred on more than three (3) occasions during any six (6) consecutive month period.

(4) Property that has been declared in writing to be abandoned by the owner, including an estate or a trust that possesses the property.

(5) Vacant property on which a municipal lien has remained unpaid for at least one (1) year.

Sec. 2. As used in this chapter, "enforcement authority" has the meaning set forth in IC 36-7-9-2.

Sec. 3. As used in this chapter, "hearing authority" has the meaning set forth in IC 36-7-9-2.

Sec. 4. As used in this chapter, "owner" means a person that holds a substantial interest in property in the form of a known or recorded fee interest, life estate, or equitable interest as a contract purchaser.

Sec. 5. As used in this chapter, "vacant structure" means a structure or building that is not being occupied by an owner, tenant, or others authorized by the owner.

Sec. 6. The legislative body of a municipality or county:

- (1) may adopt this chapter by ordinance; and
- (2) if the legislative body adopts this chapter by ordinance, shall adopt rules and procedures for its enforcement.

Sec. 7. (a) An enforcement authority may administer and enforce this chapter in conjunction with a civil action under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-1-6, or IC 36-7-9.

(b) Under all enforcement and civil actions undertaken under subsection (a), the enforcement authority is entitled to recover court costs and attorney's fees.

Sec. 8. If an enforcement authority determines that a vacant structure or an abandoned structure exists, an abatement notice and order may be sent to the owner that directs the owner to:

- (1) abate the vacant structure or abandoned structure by cleaning and securing or boarding up the vacant structure or abandoned structure and the premises upon which it is located; and
- (2) erect fences, barriers, berms, or other suitable means to

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discourage:

- (A) access to the vacant structure or abandoned structure; and
- (B) illegal dumping or littering on the premises upon which the vacant structure or abandoned structure exists.

Sec. 9. (a) An owner of a property that remains a vacant structure or an abandoned structure for at least ninety (90) consecutive calendar days may be liable for a civil penalty in the amount of five hundred dollars (\$500) per vacant structure or abandoned structure, not to exceed five thousand dollars (\$5,000) per structure per year, unless:

- (1) documentation has been filed and approved by the enforcement authority that indicates the owner's intent to eliminate the vacant structure or abandoned structure status of the property;
- (2) the owner is current on all property taxes and special assessments; and
- (3) at least one (1) of the following applies:
 - (A) The structure is the subject of a valid building permit for repair or rehabilitation and the owner is proceeding diligently and in good faith to complete the repair or rehabilitation of the structure as defined in the enforcement order.
 - (B) The structure is:
 - (i) maintained in compliance with this chapter; and
 - (ii) actively being offered for sale, lease, or rent.
 - (C) The owner can demonstrate that the owner made a diligent and good faith effort to implement actions approved by the enforcement authority.

(b) If the structure continues to remain a vacant structure beyond the initial ninety (90) days described in subsection (a) and the owner does not meet any of the exceptions set forth in this section, the enforcement authority may continue to assess penalties each year on each structure in the following amounts:

- (1) One thousand dollars (\$1,000) for the second ninety (90) calendar day period each structure remains a vacant structure or an abandoned structure.
- (2) One thousand five hundred dollars (\$1,500) for the third ninety (90) calendar day period each structure remains a vacant structure or an abandoned structure.
- (3) Two thousand dollars (\$2,000) for the fourth and each subsequent ninety (90) calendar day period thereafter each

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structure remains a vacant structure or an abandoned structure.

A civil penalty under this subsection may not exceed five thousand dollars (\$5,000) per structure per year."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1358 as printed February 11, 2009.)

LAWSON C, Chairperson

Committee Vote: Yeas 9, Nays 0.

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